

Message Text

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ACTION ERDA-07

INFO OCT-01 NEA-10 ISO-00 FEA-01 ACDA-07 CIAE-00

INR-07 IO-13 L-03 NSAE-00 NSC-05 EB-07 NRC-05

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TO SECSTATE WASHDC 7321

INFO AMEMBASSY NEW DELHI

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EO 11652: NA

TAGS: TECH ENRG PARM IN

SUBJ: TARAPUR FUEL STORAGE

REF: (A) STATE 109391; (B) STATE 81468; (C) BOMBAY 963

1. THERE FOLLOWS BY SEPTTEL ATOMIC POWER AUTHORITY'S (APA) REPLY TO ERDA'S COMMENTS ON GOI REACTION TO PROPOSED ERDA-IAEC AGREEMENT RELATING TO THE FEASIBILITY STUDY OF INCREASING SPENT FUEL STORAGE CAPACITY AT TARAPUR.

2. APA HAS INCORPORATED ITS LATEST COMMENTS IN A COMPLETELY REVISED DRAFT OF THE AGREEMENT WHICH TAKES INTO ACCOUNT ALL OF THE PROPOSED CHANGES SUGGESTED THUS FAR (THREE REFTELS). CONGEN HAS COMPARED THE TEXT OF THE VARIOUS SUGGESTED CHANGES AND CONCLUDES THAT THE GOI IS IN FACT ACCEPTING THE LATEST ERDA PROPOSALS. APA DOES PROPOSE A FEW ADDITIONAL CHANGES BUT THEY SEEM TO BE LARGELY SEMANTIC SO SETHNA APPEARS TO HAVE GOTTEN HIS TECHNICIANS TO ACCEPT WHAT HE REGARDED AS A FORTHCOMING USG POSITION. WITH REGARD TO REF (A):

A) THE APA HAS ACCEPTED THE ADDITION OF THE CLAUSE SUGGESTED AT THE BEGINNING OF NEW CLAUSE 4A.

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B) THE CORRECT TEXT OF CLAUSE 7A 1 II AS COMMUNICATED BY ERDA HAS BEEN INCORPORATED.

C. APA HAS NOTED THAT CLAUSES 7 AND 8 MAY NEED SOME FURTHER

REVISION. IT UNDERSTANDS FURTHER THAT SUCH REVISIONS WILL HAVE TO

BE MUTUALLY ACCEPTABLE.

D) REVISED CLAUSE 9 HAS BEEN ACCEPTED EXCEPT THAT THE PROPOSED REFERENCE TO GENERAL ELECTRIC HAS BEEN DELETED AND INSTEAD THE FOLLOWING WORDS HAVE BEEN ADDED: "INCLUDING ITS CONTRACTORS AND SUBJ: CONTRACTORS."

E. THE ARBITRATION CLAUSE HAS BEEN MODIFIED IN LINE WITH THE SIMILAR PROVISION IN THE EXISTING SALES CONTRACT FOR ENRICHED URANIUM. SPECIFICALLY, THE MODIFICATION TAKES THE FORM OF DROPPING THE (B) CLAUSE AS WELL AS THE PENULTIMATE SENTENCE IN THE (A) CLAUSE. BOTH OF THESE OMISSION RELATE TO THE POSSIBILITY OF APPEALING THE ARBITRATOR'S DECISION TO A COURT OF LAW. THUS, THE APA REVISION SEEMS TO MAKE THE DECISION OF THE MAJORITY OF THE ARBITRATORS FINAL AND BINDING.

3. SOME OF THE SEMANTIC CHANGES ARE A BIT CONFUSING BUT CONGEN HAS BEEN UNABLE TO GET A CONVINCING RATIONALE FOR THEIR INTRODUCTION. THE APA HAS MODIFIED ITS OWN SUGGESTED PREAMBLE PREAMBLE AND NOW HAS THE AGREEMENT BEING EXECUTED BY ERDA ON BEHALF OF THE USG AND THE PRESIDENT OF INDIA ACTING THROUGH THE DEPARTMENT OF ATOMIC ENERGY OF THE GOVERNMENT OF INDIA. HOWEVER, THROUGHOUT THE TEXT ERDA IS USED AS THE USG AGENT BUT GOI IS USED ON THE INDIAN SIDE. IF THIS LACK OF SYMMETRY IS BOTHERSOME CONGEN IS CONFIDENT THAT IT CAN BE CHANGED.

4. THE APA FORMULATION OF CLAUSE 5 SEEMS TO BE AN ATTEMPT TO (A) AVOID THE SWEEPING NATURE OF THE EARLIER APA FORMULATION AND (B) TO MEET OUR DESIRE TO LIMIT USG RESPONSIBILITY FOR THE LIMITED OFFICIAL USE

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RECOMMENDATIONS IN THE REPORT.

5. CLAUSE 8 HAS TWO CHANGES WHICH APPEAR TO BE ONLY EDITORIAL. IN FIRST SENTENCE OF CLAUSE 8(A) THE WORD "INTRODUCTION" IS CHANGED TO "USE", AND IN FIRST SENTENCE OF CLAUSE 8(B) THE WORDS "AT THE DISCRETION OF ERDA AND IAEC" ARE CHNAGED TO "WITH MUTUAL CONSENT".

6. REF (A) SEEMS TO IMPLY THAT NEW CLAUSE 13 WOULD BE A FINAL SUBSTANTIVE PARAGRAPH IN THE AGREEMENT BUT APA HAS ALSO RETAINED THE LAST PARAGRAPH OF OUR ORIGINAL PROPOSAL AND RE-NUMBERED IT CLAUSE 14. AS THIS SEEMS TO BE ENTIRELY TO OUR ADVANTAGE, CONGEN DID NOT CALL THIS MATTER TO THE ATTENTION OF APA.
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